

## **CITY COUNCIL MINUTES**

**May 20, 2013**

The Honorable Council of the City of Evansville met on regular session at 5:30 p.m. on Monday, May 20, 2013 in the City Council Chambers, Room 301 Civic Center Complex, Evansville, Indiana, with President Connie Robinson presiding. The following business was conducted.

**These minutes are not intended to be a verbatim transcript. Audiotapes of this meeting are on file in the City Clerk's Office.**

### **ROLL CALL:**

**Present:** M<sup>c</sup>Ginn, Mosby, Brinkerhoff-Riley, Lindsey, Adams, O'Daniel, Weaver, Robinson.

**Absent:** Friend

There being eight (8) members present and one (1) member absent and eight (8) members representing a quorum, I hereby declare this session of the Common Council officially open.

### **PLEDGE OF ALLEGIANCE**

This evening the pledge of allegiance is led by Councilman Conor O'Daniel.

Fellow Councilmen and those in the audience, welcome to the May 20, 2013 meeting of the Common Council.

### **COUNCIL ATTORNEY**

This evening Scott Danks is City Council Attorney.

### **SERGEANT AT ARMS**

This evening Officer McQuay is Sergeant at Arms.

### **READING AND AMENDMENT OF MINUTES**

Is there a motion to approve the minutes of the May 1, 2013 meeting of the Common Council as written?

Councilwoman Riley moved and Councilwoman Mosby seconded the motion to approve the minutes of the meeting of the Common Council held May 1, 2013 as written. Voice vote. So ordered.

### **REPORTS AND COMMUNICATIONS**

#### **IN YOUR MAY 17<sup>TH</sup> PACKET:**

\*City Council Meeting Agenda for May 20, 2013.

\*Committee Meeting Schedule.

\*City Council Meeting Minutes dated May 1, 2013.

\*Ordinance G-2013-8.

\*A copy of County Resolution CO.R-05-13-005 in support of a new hotel in Downtown Evansville.

Councilwoman Riley moved and Councilwoman Mosby seconded the motion to receive, file and make these reports and communications a part of the minutes of the meeting. Voice vote. So ordered.

**CONSENT AGENDA**

**FIRST READING OF ORDINANCES OR RESOLUTIONS**

**ORDINANCE G-2013-8     A.S.D.**

**RILEY**

An Ordinance authorizing the installation and use of speed humps

**President Robinson:** Is there a motion to adopt the Consent Agenda as written?

Councilwoman Riley moved and Councilman O'Daniel seconded the motion to adopt the Consent Agenda as written. Voice vote. So ordered.

**CONSENT AGENDA**

**SECOND READING OF ORDINANCES AND RESOLUTIONS**

**ORDINANCE G-2013-6     PUBLIC WORKS**

**O'DANIEL**

An Ordinance to vacate a certain public way or public place within the City of Evansville, Indiana, commonly known as a portion of the northern most lane of Division Street between Oakley Street on the west and Mary Street on the east

**ORDINANCE G-2013-7     PUBLIC WORKS**

**O'DANIEL**

An Ordinance to vacate a certain public way or public place within the City of Evansville, Indiana, commonly known as 711 W. Mill Road

**ORDINANCE F-2013-5     FINANCE**

**FRIEND**

An Ordinance of the Common Council of the City of Evansville authorizing appropriations and re-appropriations of funds within various departments (DMD)

**COMMITTEE REPORTS:**

**FINANCE COMMITTEE:**

**CHAIRMAN FRIEND**

**President Robinson:** The Finance Committee met this evening to hear Ordinance F-2013-5 and it comes forward with a do-pass recommendation.

**PUBLIC WORKS COMMITTEE:**

**CHAIRMAN O'DANIEL**

**Councilman O'Daniel:** Yes, Madam President, your Public Works Committee met this evening to hear Ordinances G-2013-6 and G-2013-7 and both come forward with a do-pass recommendation

**President Robinson:** Is there a motion to adopt the Committee Reports and move these ordinances to Third Reading:

Councilwoman Riley moved and Councilwoman Mosby seconded the motion to adopt the Committee Reports and move these ordinances to Third Reading. Voice vote. So ordered.

**REGULAR AGENDA**

**THIRD READING OF ORDINANCES AND RESOLUTIONS**

**ORDINANCE G-2013-6     PUBLIC WORKS**

**O'DANIEL**

An Ordinance to vacate a certain public way or public place within the City of Evansville, Indiana, commonly known as a portion of the northern most lane of Division Street between Oakley Street on the west and Mary Street on the east

Is there a motion to adopt Ordinance G-2013-6?

Councilwoman Mosby moved and Councilman O'Daniel seconded the motion to adopt Ordinance G-2013-6 and call the roll.

**ROLL CALL**

**Ayes:** McGinn, Mosby, Brinkerhoff-Riley, Lindsey, Adams, O'Daniel, Weaver, Robinson.

**Absent:** Friend

**President Robinson:** There being eight (8) Ayes and zero (0) Nays, Ordinance G-2013-6 is hereby declared adopted.

**REGULAR AGENDA**

**THIRD READING OF ORDINANCES AND RESOLUTIONS**

**ORDINANCE G-2013-7      PUBLIC WORKS      O'DANIEL**

An Ordinance to vacate a certain public way or public place within the City of Evansville, Indiana, commonly known as 711 W. Mill Road

Is there a motion to adopt Ordinance G-2013-7?

Councilwoman Mosby moved and Councilman Lindsey seconded the motion to adopt Ordinance G-2013-7 and call the roll.

**ROLL CALL**

**Ayes:** McGinn, Mosby, Brinkerhoff-Riley, Lindsey, Adams, O'Daniel, Weaver, Robinson.

**Absent:** Friend

**President Robinson:** There being eight (8) Ayes and zero (0) Nays, Ordinance G-2013-7 is hereby declared adopted.

**REGULAR AGENDA**

**THIRD READING OF ORDINANCES AND RESOLUTIONS**

**ORDINANCE F-2013-5      FINANCE      FRIEND**

An Ordinance of the Common Council of the City of Evansville authorizing appropriations and re-appropriations of funds within various departments (DMD)

Is there a motion to adopt Ordinance F-2013-5?

Councilman O'Daniel moved and Councilman Weaver seconded the motion to adopt Ordinance F-2013-5 and call the roll.

**ROLL CALL**

**Ayes:** McGinn, Mosby, Brinkerhoff-Riley, Lindsey, Adams, O'Daniel, Weaver, Robinson.

**Absent:** Friend

**President Robinson:** There being eight (8) Ayes and zero (0) Nays, Ordinance F-2013-5 is hereby declared adopted.

## **MISCELLANEOUS BUSINESS**

There will not be a City Council Meeting on Monday, May 27, 2013 or Monday, June 3, 2013.

The next City Council meeting will be Monday, June 10, 2013 at 5:30 p.m.

**President Robinson:** I would like to have a motion to instruct our Counselor, Mr. Danks to file an appeal with the Indiana Utility Regulatory Commission regarding the approval of the Johnson Control Contract.

I guess I'll open it up for discussion among Councilmembers.

**Councilman O'Daniel:** Yeah, you're...I think I'll open it. I'd asked Attorney Danks to at least file the notice of appeal and that was before we had our meeting. I think after the meeting with Johnson Controls here in Council Chambers, I think there are still enough questions that I have with re...how they came up with these numbers and the cost of this is so high that I think that we ought to pursue at least our legal remedies in pursuing this appeal.

In speaking with Mr. Ziemer and his recitation was that he thought they had met all of the legal hurdles and felt they were stuck with this. At least that's how I took it. I think that legally if we can unravel the IURC opinion then this would not go forward. And so I think given the cost/benefit of what it would cost to file this appeal and the benefit that it would bring to the ratepayers, I think we ought to move forward with it.

One other thing. I think there is also sort of a "time is of the essence", because part of that contract was I think 120 days to get financing and so knowing how appeals work, we are still looking outward maybe three months before any opinion could possibly be rendered and so I think if we pursue this now, perhaps we'll have an opinion, or at least a pending opinion, by the time any bond issuance is asked for by the Administration.

**President Robinson:** Councilwoman Riley.

**Councilwoman Brinkerhoff-Riley:** Yeah that would...I don't know if that's yet in the form of a motion but I too...I think it's necessary that we perfect our ability to file the appeal depending on what financing is available should this Council vote down the bond, then I think it raises a legitimate question of whether the statutory requirement under that financing offered through Johnson Controls or another third party, I think there is a valid question as to whether the statutory requirement of the 10% cushion would be met under that alternative financing, and if indeed the project would qualify to go forward with a different financing scenario. I know that if we do not support a bond then the ability to create the debt reserve for that final payment, which is the way that this financing skimmed through with the IURC to begin with. That would not be available under alternative financing, and theoretically, the 10% cushion would not be met under an alternative financing and I think that's realistic. I think that's reasonable for us to protect ourselves against that under a different financing, you know, would the IURC even support it at all? I think it's a valid question. It's good way to protect the citizens of this community and our...and the ratepayer.

**President Robinson:** Councilman McGinn.

**Councilman McGinn:** This is more of a question than it is discussion because I don't know the answer. Perhaps you do Scott. I'm wondering out loud whether or not new evidence can be presented to the IURC in an appeal because we've had, I think, a subsequent...I mean a significant change in, I'll call in the economics of our Water and Sewer Department, since the IURC ruling came down. We were presented with a plan that basically says 541 or 514 million dollars are going to be needed to repair our CSO under a federally...a federal mandate. I mean we really don't have a lot, you know, I'll call it wiggle room in there, and I think the IURC needs to see that because I can tell you as a consumer and as a ratepayer, once that bill gets in I don't care whether it's water, sewer or refuse, that's my water bill and if it jumps up, you know, 80 bucks or 90 bucks or whatever, I'm going to do some significant water conservation. I know everybody else is. I mean we are just not going to stand for these rates, use, and waste water like we are now so I believe there is going to be a significant decrease in water and sewer revenue because of the federally mandated repair. I want the IURC to consider that when they are looking at these facts and figures of our water usage so, you know, I don't know the answer and I'm catching a cold. I know you *(Inaudible)* research...

**Council Attorney Danks:** I'm not...the question is will the IURC reconsider because of this other thing...

**Councilman McGinn:** Yeah, I mean is that something...

**Council Attorney Danks:** They won't...they won't....

**Councilman McGinn:** *(Inaudible)* review or are they just going...

**Council Attorney Danks:** No,...we're *(Inaudible)* the Court of Appeals now, not the Commission.

**Councilman McGinn:** Oh, we appeal it through the Court of Appeals.

**Council Attorney Danks:** We have to appeal to the Court of Appeals and they'll base their decision on the record as it exists. We can supplement that record.

**Councilman McGinn:** Okay.

**Council Attorney Danks:** The Regulatory Commission, we only had a 20-day period to petition that they reconsider their decision and we did not do that within that 20-day time period.

**Councilman McGinn:** Okay, that's where I misunderstood.

**Council Attorney Danks:** *(Inaudible)* what the Court of Appeals...

**Councilman O'Daniel:** And we could always ask for a rehearing as part of the remedy to the Court of Appeals on *(Inaudible)*

**Council Attorney Danks:** That's not uncommon. If the Council is successful on the appeal, the Appellate Court has various options. One is simply to reverse the ruling, another is remand it with instructions but we can put in a prayer or a request that they consider other factors and that they consider other factors and that type of thing and reconsider...

**President Robinson:** Councilman Adams.

**Councilman Adams:** I'd like to agree with my colleague Councilman McGinn. The other thing is I think it's very, very important that whatever we do here with this Johnson Control bit that we get value. I think we all realize we have to replace the large meters, and I don't know, maybe some of the small, maybe not. I like the concept of working through...but we have to maximize the revenue and I think we have to be careful not to throw a whole bunch of other stuff in. If you look at over the period of time that has been presented, a year ago November, there has been a decreasing amount of winnowing away the wheat from the chaff, getting rid of the fat and so forth, and I don't think we are there yet. I think there are a lot of things I'm hopeful that we can get rid of and I've reflected that to the Mayor.

**President Robinson:** Any other comments?

In echoing what Councilman McGinn said, water conservation I guess, water is a necessity and you know you don't want to have to be where people are not going to be able to...they're going to have...they're not going to be able to use water because our water bills are so high. You know, I know speaking here, I mean I have a house of three and my water bill is \$68.00 a month and you know, you look at your sewer rate and it's three times higher than how much water you use. My water is \$18.00 but my sewer is over...it's 38, almost \$39.00, and you know, people that are on a fixed income, you know, that's going to hurt them having to pay that kind of money for their water.

**Councilman O'Daniel:** I'll then go ahead and make the motion then formally to have Attorney Danks go ahead and perfect the appeal.

**President Robinson:** Councilman...and a second?

*(Inaudible)*

Councilman O'Daniel moved and Councilwoman Riley seconded the motion to file an appeal with the Indiana Utility Regulatory Commission to appeal the approval of the Johnson Contract. I'll take a Voice Vote...no, not a Voice Vote, I'm going to have Roll Call.

**ROLL CALL**

**Ayes:** M<sup>c</sup>Ginn, Brinkerhoff-Riley, Lindsey, Adams, O'Daniel, Robinson.

**Nay:** Mosby, Weaver

**Absent:** Friend

**President Robinson:** There being six (6) Ayes and two (2) Nays, the motion carries.

Is there anyone in the audience under Miscellaneous?

**COMMITTEE REPORTS:**  
**FINANCE COMMITTEE:**  
Nothing scheduled at this time.

**CHAIRMAN JOHN FRIEND**

**PUBLIC WORKS COMMITTEE:**  
Nothing scheduled at this time.

**CHAIRMAN CONOR O'DANIEL**

**A.S.D. COMMITTEE:**  
Re: Ordinance G-2013-8  
Date: June 10, 2013  
Time: 5:20 p.m.  
Notify:

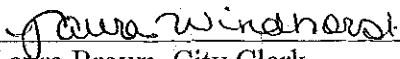
**CHAIRWOMAN STEPHANIE RILEY**  
Authorizing the use of speed humps


**ADJOURNMENT**

**President Robinson:** Can I have a motion for adjournment?

Councilwoman Mosby moved and Councilman O'Daniel seconded the motion to adjourn.  
Voice Vote. So Ordered.

Meeting adjourned at 5:44 p.m.

  
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Laura Brown, City Clerk

  
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Constance Robinson, President